

Supreme Court, U.S.  
FILED

OCT 17 1977

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

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No. 77-524

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FRED G. MORITT,

Appellant

v.

THE GOVERNOR OF THE STATE OF NEW YORK, THE  
ATTORNEY GENERAL OF THE STATE OF NEW YORK  
and THE SECRETARY OF THE STATE OF NEW YORK,

Respondents,

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ADDITIONAL APPENDIX

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APPENDIX D

APPELLATE DIVISION OF THE  
NEW YORK STATE SUPREME  
COURT, SECOND DEPARTMENT

Index No. 9171/74

FRED G. MORITT

Appellant,

v.

GOVERNOR, &c., &ors, &c.,

Respondents

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Before MARTUSCELLO, Acting Presiding  
Justice, COHALAN, JR., DAMIANI, SHAPIRO  
and TITONE, Associate Justices

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ORDER ON APPEAL

July 6, 1976

In the above entitled cause inter alia  
to (1) direct the Governor to convene the  
Legislature at special session for the purpose  
of enacting election laws not repugnant to the  
Constitutions of the United States and the State  
of New York and (2) declare sections 131 (subd. 2,  
par. [a]) and 136 (subd. 5) of the Elections Law  
unconstitutional, the above named Governor of the  
State of New York, etc., et al., respondents

in the court below, having appealed to this court from an order and judgment (one paper) of the Supreme Court, Kings County, entered March 12, 1975, which, without a hearing, inter alia, (1) granted the application, (2) denied appellants' cross motion to dismiss the proceeding, (3) declared the subject sections of the Election Law unconstitutional and (4) directed the Governor to convene the Legislature for the purpose of amending those sections; and the said appeal having been argued by Robert S. Hammer, Esq., of counsel for the appellants and argued by Fred G. Moritt, Esq., respondent pro se, due deliberation having been had thereon; and upon this court's opinion and decision slip heretofore filed and made a part hereof, it is

ORDERED that the order and judgment appealed from is hereby unanimously reversed, on the law, with \$50 costs and disbursements, cross motion granted, and the proceeding dismissed.

Enter:

IRVING M. SELKIN  
Clerk of the Appellate Division.

APPENDIX D CONT.

APPELLATE DIVISION OF THE  
NEW YORK STATE SUPREME  
COURT, SECOND DEPARTMENT

Index No. 9171/74

FRED G. MORITT

Appellant,

v.

GOVERNOR, &c., &ors, &c.,

Respondents

MEMORANDUM

July 6, 1976

In a proceeding pursuant to CPLR article 78 inter alia to (1) direct the Governor to convene the Legislature at special session for the purpose of enacting election laws not repugnant to the constitutions of the United States and the State of New York and (2) declare sections 131 (subd. 2, par. [a]) and 136 (subd. 5) of the Election Law unconstitutional, the appeal is from an order and judgment (one paper) of the Supreme Court, Kings County, entered March 12, 1975, which, without a hearing, inter alia, (1) granted the application, (2) denied appellants' cross motion to dismiss the proceeding, (3) declared the subject sections of the Election Law unconstitutional and (4) directed the Governor to convene the Legislature for the purposes of amending those sections.

Order and judgment reversed, on the law, with \$50 costs and disbursements, cross motion granted, and proceeding dismissed.

The petitioner previously raised the identical claims set forth herein before a Federal tribunal in 1972 (Moritt v. Rockefeller, 346 F.Supp. 34, affd. 409 US 1020). At that time a three-judge panel considered the petitioner's standing and his constitutional challenges to sections 136 (subd. 5) and 161 (subd. 2, par. [a]) of the Election Law and found that he lacked standing to maintain the action as to the former statute and that his challenge to the constitutional validity of the latter was insubstantial. Upon appeal, the Supreme Court of the United States affirmed, without opinion, the judgment of the District Court. At bar, the petitioner merely reasserts, in exact copy, his Federal complaint, without further explanation or argument; the basis for the Special Term's determination were solely the statutes' purported transgression upon the Federal adjudication, we are of the view that such finding was improper and that appellants' cross motion to dismiss the proceeding should have been granted as such decision was res judicata with regard to the Federal questions already litigated and disposed of (Friedman v. State of New York, 24 NY2d 528, 535).

We think, in any event, that the statutes in question are not unconstitutional for the reasons asserted by the petitioner and by the Special Term. Since section 136 (subd. 5) of the Election Law requires that a candidate show state-wide support through obtaining signatures

of persons in one-half of the congressional districts, which are presumably equally constituted by voter population (see Wells v. Rockefeller, 311 F.Supp. 48, affd. 309 US 901), no voter in a particular area is given greater voting power than one in another, and there is not in this respect a violation of the one-man, one-vote, doctrine (see Socialist Workers Party v. Rockefeller, 314 F.Supp. 984, aff. 400 US 806; Moore v. Ogilvie, 394 US 814). Furthermore, there is no support in the record for the Special Term's finding that section 131 (subd. 2, par. [a]) of the Election Law "gives a free and easy ride to candidates favored by a politically controlled State Committee by a weighted vote".

MARTUSCELLO, Acting P.J., COHALAN, DAMIANI, SHAPIRO and TITONE, JJ., concur.

## APPENDIX E

SUPREME COURT OF THE STATE  
OF NEW YORK, KINGS COUNTY

Index No. 9171/74

FRED G. MORITT

Appellant,

v.

GOVERNOR, &c., &ors, &c.,

Respondents

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ORDER AND JUDGMENT

March 10, 1975

NICOLS, J. Petitioner having moved this Court for a judgment pursuant to CPLR Article 78 declaring Election Law §§ 136(5) and 131(2) unconstitutional, and for such other and further relief as to the Court might seem just and proper, and respondents having cross-moved to dismiss this proceeding and the matter having duly come on to be heard before me on September 24, 1974.

NOW, upon reading and filing the notice of motion dated June 12, 1974, the petition verified June 11, 1974 and the exhibits annexed thereto and filed therewith, all in support of this application, and the notice

of cross-motion dated September 23, 1974 and the letter-stipulation dated October 17, 1974, and petitioner having appeared in person and respondents by their attorney, HON. LOUIS J. LEFKOWITZ, Attorney General, by Robert S. Hammer, Esq., Assistant Attorney General, and due deliberation thereon having been had, and the Court having rendered and filed its decision granting the petition and denying the cross-motion to dismiss,

NOW, on motion of HON. FRED G. MORITT, petitioner, in person, it is

ORDERED, that the petitioner's application be and the same is hereby, granted; and it is further

ORDERED, that the respondents' cross-motion to dismiss be and the same is hereby, denied; and it is further

ORDERED ADJUDGED AND DECLARED that Election Law §§ 136(5) is unconstitutional, null and void as being in conflict with the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and it is further

ORDERED, ADJUDGED AND DECLARED that Election Law § 131(2) is unconstitutional, null and void as being in conflict with the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and Article 6 of the Constitution of the State of New York with respect to the nomination of candidates for state-wide office; and it is further

ORDERED AND ADJUDGED, that the Governor convene the Legislature for the purpose of amending Election Law §§ 136(5) and 131(2); or, if it be in session,

request it to amend said statute in a manner not repugnant to the Constitutions of the State of New York and of the United States and not inconsistent with the opinion of this Court; and it is further

ORDERED AND ADJUDGED, that pending such enactment, political parties are enjoined and restrained from holding conventions of state committeemen or other persons holding party offices for the purpose of nominating candidates for state-wide public office; and it is further

ORDERED, that the undersigned Court shall retain jurisdiction of this proceeding; and it is further

ORDERED, that if the respondents shall serve and file a timely notice of appeal, the enforcement of this order shall be stayed pending the hearing and determination thereof.

E N T E R

GEORGE H. NICOLS  
J.S.C.

ANTHONY N. DURSO  
CLERK

APPENDIX E CONT.

SUPREME COURT OF THE STATE  
OF NEW YORK, KINGS COUNTY

Index No. 9171/74

FRED G. MORITT

Appellant,

v.

GOVERNOR, &c., &ors, &c.,

Respondents

MEMORANDUM

December 13, 1974

NICOLS, J. Petitioner seeks a judgment declaring sections 136(5) and 131(2) of the New York State Election Law unconstitutional and other relief. Respondents cross-move to dismiss.

The court finds that the requirements of section 136(5) of the New York State Election Law to be violative of the Equal Protection Clause of the Fourteenth Amendment. This section violates the "one-man one-vote" doctrine as laid down by the United States Supreme Court in recent rulings (Reynolds v. Sims, 377 U.S. 533; Gray v. Sanders, 372 U.S. 368; Baker v. Carr, 82 S.Ct. 691, 702; Moore v. Ogilvie, 89 S.Ct. 1493).

The idea that one group of voters can be granted greater voting strength than another is hostile to the one-man one-vote doctrine of representative government. Section 136.5 does deprive voters throughout the State of an equal voice in the acceptance or rejection of insurgent candidates within the political parties. I declare the requirements of Section 136(5) unconstitutional.

The petitioner further attacks Section 131(2) of the New York State Election law on two grounds: a violation of the equal protection and due process clauses of the United States Constitution, and in violation of Article 6 of the New York Constitution with respect to the nomination of candidates for State-Wide office.

This court finds this section to be a violation of the equal protection and due process clauses in that the legislature has delegated to the State committee of political parties the power to nominate candidates for State-Wide office in a manner of Weighted Voting power in violation of the "one-man one-vote" rule. It places an onerous and difficult burden upon any other candidate who is not so designated by the State Committees.

The requirements in protecting the integrity of the political process from frivolous and fraudulent candidacies is rightly an important State interest. These requirements even when onerous and unreasonable burden are constitutionally valid, provided the requirements and burdens are equal for all the candidates.

Section 131(2) gives a free and easy ride to candidates favored by a politically controlled State Committee by a weighted vote, and places unreasonable cumbersome procedures upon other candidates.

It is incumbent upon the legislature to enact statutes respecting the nomination of candidates for State-Wide office within the guidelines of the "one-man one-vote" rule, and equally applicable to all aspiring candidates.

There remains solely the question as to whether or not this petitioner is an "aggrieved party."

The petitioner is a member of the bar and a judge for many years standing. This petitioner has a standing in the outcome of the pending controversy either as a candidate or a voter, despite the fact the petitioner could be granted no personal relief. The petition is maintainable for the purpose of preventing a failure of justice.

This court therefore grants the motion of the petitioner declaring Sections 136(5) and 131(2) of the New York State Election Law to be unconstitutional, and null and void.

This court further directs the Governor to convene the legislature at special session or otherwise to enact election laws not repugnant to the constitutions of the State of New York, and the United States.

This court further enjoins and restrains all further conventions of persons holding party positions, or State Committeemen from holding further conventions with reference to State-Wide public office.

Accordingly the cross-motion to dismiss the petition is denied.

Settle order on notice.

G. H. NICHOLS  
J.S.C.